

Bureau of Health Facilities Licensing

# 61-84 and HCBS Settings

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## DDSN Question #1

103. D – The DHEC regulation sets maximum occupancy levels in Section 103.D. While there is a specific exception for staff/volunteers, there is no mention of visitors, especially if those visitors sleep over.

The HCBS settings rule requires that an individual receiving HCBS be able to have visitors at any time (441.301(c)(4)(v)(D)). Additional guidance issued by CMS indicates that these visitors should be able to sleep over if the HCBS consumer so desires.



## Section 100 - Definitions

L. Community Residential Care Facility (CRCF). A facility which offers room and board and which, unlike a boarding house, provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. **It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement.** Included in this definition is any facility (other than a hospital), which offers or represents to the public that it offers a beneficial or protected environment specifically for individuals who have mental illness or disabilities. These facilities may be referred to as "assisted living" provided they meet the above definition of community residential care facility.



## Section 100 - Definitions

WW. Resident. Any individual, other than staff members/volunteers or owner and their family members, who **resides** in a facility.



## Section 103.D

Licensed Bed Capacity. No facility that has been **authorized to provide a set number of licensed beds**, as identified on the face of the license, shall exceed the bed capacity. No facility shall establish new care/services or occupy additional beds or renovated space without first obtaining authorization from the Department. Beds for use of staff members/volunteers are not included in the licensed bed capacity number, provided such beds and locations are so identified and used exclusively by staff members/volunteers.





## Section 103.E

Persons Received in Excess of Licensed Bed Capacity. **No facility shall receive for care or services persons in excess of the licensed bed capacity, except in cases of justified emergencies. (l)**

EXCEPTION: In the event that the facility temporarily provides shelter for evacuees who have been displaced due to a disaster, then for the duration of that emergency, provided the health, safety, and well-being of all residents are not compromised, it is permissible to temporarily exceed the licensed capacity for the facility in order to accommodate these individuals



## Section 103. F

Living Quarters for Staff Members. **In addition to residents, only staff members, volunteers, or owners of the facility and members of the owner's immediate family may reside in facilities licensed under this regulation. Resident rooms shall not be utilized by any individuals other than facility residents,** nor shall bedrooms of staff members/family members of the owner or the licensee be utilized by residents. Staff members/family members of the owner or licensee/volunteers shall not use resident living rooms, recreational areas or dining rooms unless they are on duty.



- Reside: *to dwell permanently or **continuously***  
(<https://www.merriam-webster.com/dictionary/reside>)
- Visitor: *one who comes upon premises to see the owner or occupant, whether social, business or professional reasons* (see Ballentine's Law Dictionary, visitor (2010))
- Nothing in R. 61-84 prevents a CRCF resident from being able to have visitors at any time, including **occasional overnight** visitors.



# Considerations

- The Bill of Rights for Residents of LTCFs, SC Code §§ 44-81-10
  - (J) Treated with respect and dignity and assured privacy during treatment and when receiving personal care.
  - (K) Immediate access to the resident; residents right to deny or withdraw consent; Allowed to meet with resident as long as it does not disrupt resident care or safety
  - (N) Assured privacy for visits of a conjugal nature
- Section 401. Policy and Procedures – should address visitors

## DDSN Question #2

103.G. – This DHEC regulation requires that a DHEC issued license be conspicuously posted at the facility. While there is nothing specific in the HCBS settings rule which addresses this, CMS guidance has raised concerns about administrative sorts of documents being conspicuously posted at the facility as it is seen to detract from maintaining a home like environment.



## Section 103.G.1.

A license is issued by the Department and shall be **posted in a conspicuous place in a public area within the facility.**

S.C. Code Ann. § 44-7-280, “Licenses must be posted in a conspicuous place on the license premises.” This is statutory requirement.

## DDSN Question #3

501.C. – This DHEC regulation indicates that no services shall be provided to individuals who are not residents of the facility. It is possible that some of the visitors that the HCBS settings rule requires (see 103.D above) could be service recipients from another facility. As such, they would need services while visiting the facility.

## Section 501.C.

**No supervision/care/services shall be provided to individuals who are not residents of the facility ...**

- Does the final rule require facilities to provide supervision/care/to non-residents?
- Is the visitor's (home) provider responsible for ensuring he/she receives appropriate supervision/care/services?



## DDSN Question #4

1303.F. – This DHEC regulation indicates that meals should be provided in accordance with explicit menus. The HCBS settings rule requires that individuals receiving HCBS have access to any food they want at any time (441.301 ( c)(4)(C) ).





# Section 1303.F. & G

F. **Specific times for serving meals shall be established, documented** on a posted menu, and followed.

G. Suitable **food and snacks shall be available and offered between meals** at no additional cost to the residents.

- Does not prevent facilities from providing residents to access to food at any time.
- Does not inhibit residents from having freedom and support to control their own schedules.



## DDSN Question #5

1303.H. – This DHEC regulation indicates that meals should be eaten in the dining room at a regular meal time. As noted in 1303.F., the HCBS settings rule requires that individuals receiving HCBS have access to food any time.

# Section 1303.H.

**Residents shall be encouraged to eat in the dining room at mealtime.** Tray service shall be permitted when the resident is medically unable to access the dining area for meals, or if the facility has received written notice from the resident/responsible party of a preference to receive tray service, in which case it may be provided on an occasional basis unless otherwise indicated in the facility's policies and procedures. Under no circumstances, may staff members utilize tray service for their own convenience.

- Does not prevent facilities from providing residents access to food at any time.
- Simply requires facilities to encourage residents to eat in the dining room at mealtime.



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